

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KENNETH GODOY,

No. 2:20-cv-01938-DAD-KJN (PC)

Plaintiff,

v.

MONIVIRIN SON, et al.,

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND GRANTING
DEFENDANTS' MOTIONS TO DISMISS

Defendants.

(Doc. Nos. 43, 44, 56)

Plaintiff Kenneth Godoy is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action brought pursuant to 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636 (b)(1)(B) and Local Rule 302.

On September 29, 2022, the assigned magistrate judge issued findings and recommendations recommending that defendant Bobbala's motion to dismiss this action (Doc. No. 43) and the motion to dismiss filed on behalf of the remaining defendants Austin, Hliang, Ikegbu, and Son (Doc. No. 44), both be granted because plaintiff's operative first amended complaint ("FAC") fails to state a cognizable claim of deliberate indifference to his serious medical needs under the Eighth Amendment. (Doc. No. 56.) The magistrate judge recommended that this action be dismissed without leave to amend because "plaintiff has not requested leave to amend, and any amendment would be futile." (*Id.* at 10.) Those findings and recommendations were served on the parties and contained notice that any objections thereto were to be filed within

1 fourteen (14) days from the date of service. (*Id.* at 4.) After receiving an extension of time in
2 which to do so, plaintiff filed objections to the pending findings and recommendations on
3 December 2, 2022. (Doc. No. 60.) On December 19, 2022, defendant Bobbala filed a response
4 to plaintiff's objections. (Doc. No. 61.) On January 23, 2023, plaintiff filed a reply to defendant
5 Bobbala's response. (Doc. No. 62.) The remaining defendants did not file a response to
6 plaintiff's objections. None of the defendants filed objections to the findings and
7 recommendations.

8 In his objections, plaintiff merely summarizes the allegations in his FAC and restates the
9 arguments he had presented in his opposition to the defendants' motions to dismiss this action.
10 (Doc. No. 60.) Plaintiff does not meaningfully address the magistrate judge's conclusion that
11 plaintiff failed to allege facts that, if proven, would establish that defendants acted with a
12 sufficiently culpable state of mind, as required for claim of deliberate indifference to serious
13 medical needs under the Eighth Amendment. (*See* Doc. No. 56 at 7.) As the findings and
14 recommendations correctly explain, “[a]lthough plaintiff disagreed with the course of treatment, a
15 mere difference in opinion concerning the appropriate medical treatment cannot be the basis of an
16 Eighth Amendment claim.” (*Id.* at 8.) Moreover, in plaintiff's reply to defendant Bobbala's
17 response to his objections, plaintiff again summarizes his allegations and argues that he has stated
18 a cognizable Eighth Amendment claim in his FAC. (Doc. No. 62 at 2–7.) Plaintiff does not
19 request that the court grant him leave to file a further amended complaint, nor does he proffer
20 additional allegations that he would include in any further amended complaint. Having
21 considered plaintiff's objections and his reply, the undersigned concludes that plaintiff has not
22 presented any basis upon which to reject the pending findings and recommendations.

23 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a
24 *de novo* review of the case. Having carefully reviewed the entire file, including plaintiff's
25 objections, defendant Bobbala's response, and plaintiff's reply, the court concludes that the
26 findings and recommendations are supported by the record and by proper analysis.

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1 Accordingly,

2 1. The findings and recommendations issued on September 29, 2022 (Doc. No. 56)
3 are adopted in full;

4 2. Defendant Bobbala's motion to dismiss (Doc. No. 43) is granted;

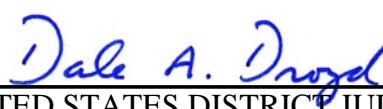
5 3. The remaining defendants' motion to dismiss (Doc. No. 44) is also granted;

6 4. This action is dismissed; and

7 5. The Clerk of the Court is directed to close this case.

8 IT IS SO ORDERED.

9 Dated: March 8, 2023


10 UNITED STATES DISTRICT JUDGE

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